State of Michigan
John Engler, Governor

Department of Consumer & Industry Services
Kathleen M. Wilbur, Director

Public Service Commission

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Commissioners

John G. Strand
John C. Shea
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May 9, 1997

The Honorable John D. Dingell, Ranking Member
Commerce Committee Democratic Office
564 Ford House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Dingell,

I am pleased to respond to your questionnaire dated April 10, 1997.

I would also like to take this opportunity to comment to you on the status of electric industry restructuring activities here in your home state. As you may know, the Michigan Public Service Commission has been a leader among state regulators in considering approaches to implementing competition in the electric industry through direct access programs. Our consideration of this issue began about five years ago. Electric industry restructuring is a complicated issue, and making significant changes requires careful consideration of a wide variety of interests and issues. Our consideration of this issue is coming to a point where we believe that a significant decision will be reached soon, which will unveil our notion as to how and when the electric industry in Michigan be restructured. We hope that the Congress, in its deliberations, carefully observes and considers the actions of Michigan and other state governments on this very important subject.

Congressman Dingell, as members of government from your home state, I offer the consultation and advice of our agency in your evaluation of this matter. Please call me if I or others at the MPSC may be of assistance to you.

If you have any further questions regarding our response to your letter, please contact John Abramson, Director, Electric Division at (517)334-6437.

Sincerely,

John Strand

John G. Strand
Chairman

attachment
cc: Commissioner John C. Shea
Commissioner David A. Svanda

1. ***Has your Commission or State legislature considered or adopted retail competition? If retail competition is occurring at this point, what effect has it had on consumer prices?***

Over the last few years, the Michigan Public Service Commission (MPSC) has taken a number of steps in the direction of providing greater customer choice through the means of retail wheeling and direct access programs within the state of Michigan.

In June 1995, the MPSC issued a final order in Case Nos. U-10143 and U-10176 authorizing a limited retail wheeling pilot program for Consumers Power Company (Consumers) and The Detroit Edison Company (Edison). The program was authorized to start when there arose the need for new generating capacity by the utilities. At this time, inasmuch as neither utility has filed a "need" case, this pilot has not started. While neither company has indicated it needs new capacity, an administrative law judge has made such a determination for Detroit Edison. In addition, Consumers and Edison have appealed these orders to the Michigan Court of Appeals asserting generally that the MPSC is without authority to mandate such retail wheeling plans.

In November 1996, the Commission approved a limited retail wheeling program for Consumers as part of a global settlement. The program, which is targeted toward transmission and subtransmission level customers, has been enthusiastically responded to by potential participants who perceive an opportunity to secure lower rates for electricity. On April 25, 1997, Consumers held a lottery to determine the participants for the program. The Consumers direct access program should provide the MPSC with practical information regarding the implementation of retail wheeling and direct access programs.

On January 8, 1996 Governor Engler forwarded economic development recommendations from the Michigan Jobs Commission for electric and gas utility reform. During 1996, the Commissioners had informal meetings with numerous interest groups in the state, held public hearings to receive public comment, and met with Commissioners from other states to explore the reciprocity issue. Many parties, including the Commission Staff, met throughout 1996 to informally attempt to develop consensus on a program and process to implement the basic principles of the Jobs Commission's restructuring proposals.

As a result of these meetings and all the forgoing activities, the Commission Staff issued a document entitled "Staff Report on Electric Industry Restructuring" on December 19, 1996. This document, which represents the opinion of the Staff but which has not yet been approved or disapproved by the Commission, recommends the following:

- A phased-in program of direct access (also known as customer choice) based on two fundamental principles:

    - All customers should be eligible to participate in the emerging competitive market, and

- Rates should not be increased for any customers and should be reduced where possible.

- Beginning in 1997, customers should have the opportunity to select the power supplier of their choice.

- All customers would be eligible to participate, but the total amount would be limited to blocks of load equaling approximately 2½% of each utility's load in 1997, 5% in 1998, 7½% in 1999, and 10% in 2000.

- In 2001, all commercial and industrial customers served at primary voltage would be eligible to select the power supplier of their choice.

- In 2004, all remaining customers would be eligible to select the power supplier of their choice.

The Staff Report indicates that stranded costs should be limited to five specific cost categories. To avoid subsidization, stranded costs should only be recovered from those customers exercising choice. Additionally, securitization should be used, where possible, as a mechanism for recovery of potentially stranded assets. Securitization is a method of refinancing that lowers annual costs to all customers, but may extend the term of the obligation.

The Staff Report indicates that, through the combination of customer choice and securitization bonds, the first few years of savings in electricity costs to Michigan customers could exceed $300 million. Additional savings could be possible in subsequent years. Finally, the Staff believes that its recommendation regarding electric industry restructuring will assure safe and reliable service to customers and financially healthy utilities during the transition period.

On December 20, 1996, the PSC issued an order establishing a series of public meetings to allow interested parties to address the proposals contained in the Staff Report. Parties were also permitted to file written comments by January 21, 1997. After reviewing the testimony and comments, the Commission concluded that additional information would be useful for the Commission to fully evaluate the Staff Report. The Commission determined that Consumers and Edison should be requested to make informational filings to disclose how they would propose to implement the Staff Report. Other electric utilities could also make such filings if they desired to do so.

The utilities' informational filings were to include: (1) calculation of anticipated stranded costs, (2) analysis of potential benefits of securitization, (3) allocation of direct access capacity during phase-in, (4) tariffs for direct access service, (5) the standby services that the utility would provide, (6) any new or additional charges not currently assessed, (7) a description of any transmission constraints or limitations on the ability to import power into the utility's system, (8) status of discussions regarding the development of an independent system operator, and (9) description of the methods that the utility would propose to alleviate concerns regarding market power in a competitive environment.

After the utilities' informational filings were made on March 7, 1997, the Commission held additional public hearings and accepted written comments on the filings.

The Commission is now reviewing the filings and comments in anticipation of moving forward in the process of implementing greater customer choice alternatives.

2. ***Has your State asked Congress to enact legislation mandating retail competition? Has it sought Congressional action to enable or assist it in adopting retail competition? Has it requested or recommended any other type of Congressional action?***

The MPSC has not asked Congress to enact legislation mandating retail competition, nor has it sought Congressional action to enable or assist it to adopt retail competition. In the 104th Congress, and again in the 105th, the MPSC has strongly recommended that Congress take prompt action to reform the federal nuclear waste program, in light of the continuing failures experienced with the program.

3. ***Does your Commission currently have sufficient authority to resolve stranded cost issues in the event Congress enacts legislation providing for retail competition by a date certain? If not, what timing and other problems might ensue? What could Congress do to address any such problems?***

Although this question is not free from doubt and persuasive arguments exist to the contrary, since the MPSC has jurisdiction over the rates, terms, and conditions of all aspects of retail service and the facilities to provide such service, including retail access and unbundled retail service, the MPSC should be held to have jurisdiction over the stranded costs which may result if a retail customer "leaves the system" and purchases power supply from an alternative supplier.

A timing lag problem to enact appropriate authorizing legislation for the MPSC to assess stranded costs should not arise.

4. ***Are there any other areas in which your State currently does not have the necessary authority to address issues arising from federal legislation mandating competition, or repeal of the Public Utility Holding Company Act of 1935 (PUHCA) or the Public Utility Regulatory Policies Act of 1978?***

The MPSC is in the process of evaluating its current statutory authority as it relates to the transition to generation competition for retail and wholesale customers. National clarification of reciprocity would be helpful, as well as consideration of repeal or amendment of PUHCA and PURPA. However, there is insufficient information at this time regarding the nature of any federal legislation mandating competition to respond in a specific manner.

5. Would any constitutional issues be raised by federal legislation:

a. mandating that states choose between adopting retail competition by a date certain and having a federal agency preemptively impose retail competition?

Any attempt by the federal government to mandate state action would implicate the Tenth Amendment, which reserves power to the states. In New York v United States, 505 US 144; 112 S Ct 2408; 120 L Ed 2d 120 (1992), the United States Supreme Court held that Congress could not commandeer state governments into the service of federal regulatory purposes without infringing upon the core of state sovereignty reserved by the Tenth Amendment and, thus, such action was beyond the power of Congress. Accordingly, in considering federal legislation that would require states to conduct proceedings on retail competition, Congress must ensure that it does not enact a statutory scheme that commandeers the legislative and administrative processes of the states in violation of the Tenth Amendment, as determined in New York, supra. Such Congressional action would ensure that states can follow the example of, and be consistent with, changes in bulk power markets.

The regulation of a utility's retail sales of electricity to its customers traditionally has been considered a matter of state regulation because of the intrastate nature of the transaction. The power of Congress to regulate commerce is contained in Article I, Section 8, cl. 3 of the U.S. Constitution, which empowers Congress "[t]o regulate Commerce . . . among the several states." In Gibbons v Ogden, 9 Wheat. 1, (1824), Chief Justice John Marshall acknowledged that limitations on the power of Congress are inherent in the language of the Commerce Clause:

> "It is not intended to say that these words comprehend that commerce which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States. Such a power would be inconvenient, and is certainly unnecessary.

> Comprehensive as the word 'among' is, it may very properly be restricted to that commerce which concerns more states than one. . . .The enumeration presupposes something not enumerated; and that something, if we regard the language or the subject of the sentence, must be exclusively internal commerce of a State." Id., at 194-195.

More recently, in United States v Lopez, 514 US 549; 115 S Ct 1624; 131 L Ed 2d 626 (1995), the United State Supreme Court reiterated that there is "a distinction between what is truly national and what is truly local." In so doing, the Court identified three broad categories of activity that Congress may regulate under the Commerce Clause. Those categories include (1) regulation of the use of the channels of interstate commerce, (2) the regulation and protection of the instrumentalities of interstate commerce or persons or things in interstate commerce, even though the thread may come only from intrastate activities, and (3) the regulation of those activities having a substantial relation to interstate commerce.

Wholessale transactions have increased since EPAct. Federal legislation should reflect these changes. In considering the passage of federal legislation that might entirely preempt a state's regulation of retail competition, Congress must ensure that its regulation is tailored to stay within the limitations contained in Article I, Section 8, cl. 3 of the United States Constitution.

b. requiring states to conduct a proceeding on retail competition, reserving to the states discretion not to adopt retail competition if they determine doing so would not be in its consumers' best interests?

Federal legislation requiring the states to conduct a proceeding on retail competition raises a Tenth Amendment issue. The Tenth Amendment to the United States Constitution provides that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." See New York, supra.

6. From a practical standpoint, what problems would arise if Congress adopted legislation mandating retail competition which did not grandfather prior state action?

The answer may depend on the timing and range of any Congressional mandate. If a state has a program that requires full retail access prior to a federal mandate, the problems should be relatively insignificant. However, if a state's retail access program provides for gradual implementation, or if a state were to determine that the present system is adequate, then a federal mandate could have substantial implications. Certainly, from the perspective of a state that is promoting retail competition, it would be preferable if actions taken by a state to implement retail competition prior to any federal action were deemed to be in compliance with federal retail competition mandates.

To the extent that a federal mandate impinges upon a state initiative, there could be associated problems affecting financing arrangements and regulation under the state program. Related to these problems are the commitments made by the buyers and sellers of electricity to participate in a state program. Such commitments could be compromised or lost if the federal mandate substantially changes the time frames and access requirements of the state program. Prior state action which interferes with interstate commerce should not be condoned by a blanket grandparenting provision.

7. ***In hearings before the Energy and Power Subcommittee during the last Congress, some witnesses took the position that Congressional legislation mandating retail competition is necessary to protect the interests of small and residential consumers. This was based on the assertion that large industrial customers are able to negotiate lower rates with state utility commissions, and that the incidence of such rate reductions is on the increase.***

   a. ***Are you aware of any study or analysis relevant to your State that supports this conclusion?***

   The Commission is aware that there has been an increase in negotiated special contracts between utilities and customers in the past few years. The increase in special contracts represents a response to the increasingly competitive nature of the industry and reflects an effort to retain or attract business in the state. These special contracts provide rate concessions in exchange for guaranteed terms of service. Special contracts have been approved for various industrial customers (including General Motors, Ford and Chrysler) and non-industrial customers (e.g., K-mart, McDonalds, and hospitals) and now represent a significant part of utility revenues.

   b. ***Please provide any information you can on the historical relationship between residential and industrial rates, the extent to which one customer class has subsidized another, and whether or not this trend has altered in recent years.***

   The two largest electric utilities in the state are Edison and Consumers. Historically, the cost of service study results for these utilities have shown that the residential class provides less revenue than its fully allocated cost of service. In comparison, the industrial and commercial classes tend to provide more revenues than their allocated costs of service. The commercial class provides a relative greater return than the industrial class. These are average class results. Specific customers and/or tariff classifications within a customer class may provide different results.

The MPSC has been attempting to remedy the subsidy issue in recent cases. The following quote from Consumers Power's Case No. U-10685 order illustrates the MPSC's efforts in this area and the relative cost of service results.

> *In Case No. U-10335, the Commission allocated nearly 70% of the overall increase to the residential class. That allocation increased residential rates by more than 5%, while increasing primary class rates by 0.82%. Notwithstanding that action, the Commission concludes from the record that industrial rates remain above the cost to serve those customers.... The Commission also concludes that rates above the cost of service may encourage industrial customers to seek societally noneconomic alternative electric supplies, may create a potential for lost sales for Consumers with correspondingly reduced earnings, and may create a risk of unnecessarily higher rates in the future for captive customers. The Commission therefore concludes that it should continue to move industrial rates toward the cost of service.*
>
> *On the other hand, the Commission also finds that the increase in residential rates needed to move immediately to the cost of service...is too large to impose in one step. Therefore, the Commission will increase rates for the residential class as a whole by 3.9% effective for service rendered as of the day after this order is issued. For service rendered on and after December 1, 1996, the Commission will increase rates for residential customers by another 3.9%, with other rates reduced correspondingly.*

- Partial Final Opinion and Order, Case No. U-10685, dated February 5, 1996, pp. 42-44.

8. Although electricity rates vary widely within the U.S., they have fallen recently in some parts of the country. Please provide any information you can about rate trends in your State, and how they affect various customer classes.

The information below, taken from the Edison Electric Institute's Statistical Yearbook of the Electric Utility Industry, illustrates the annual average revenue in cents per kWh sold for the total electric utility industry in the state of Michigan for the period 1986 - 1995.

Average Revenue in Cents Per Kilowatt-Hour Sold
Total Electric Utility Industry in the State of Michigan
For the Years 1986-1995

Year	Total	Residential	Commercial*	Industrial*
1986	6.96	7.56	8.15	5.84
1987	6.63	7.31	7.59	5.53
1988	6.51	7.29	7.54	5.35
1989	6.75	7.76	8.07	5.53
1990	7.06	7.78	8.09	5.81
1991	7.02	7.86	7.97	5.72
1992	7.23	8.13	8.29	5.89
1993	7.16	8.16	8.02	5.37
1994	7.11	8.28	7.93	5.27
1995	7.07	8.34	7.86	5.15

Source: EEI Statistical Yearbook of the Electric Utility Industry

*Commercial and Industrial Average Rates include Special Contract Sales.

9. ***Some proponents of retail competition hold the view that all electricity resources should be sold at a market price and that state authority to regulate retail rates should be eliminated. How would such a policy affect shareholders and ratepayers? What mechanisms could states or Congress employ to manage these issues? In a restructured electric industry, who should receive the benefits of these low-cost resources - - utility ratepayers, utility shareholders, or the highest bidder?***

An initial concern about taking such drastic action should be the will of the people. No data of which we are aware suggests that a majority of Michigan residents favor the complete elimination of state regulation. A suggestion that all electricity resources (generation, transmission, and distribution) be sold at market price and that state regulation be eliminated has not surfaced here in Michigan. What has generally been suggested is that the generation sector be deregulated to permit bilateral power supply contracts, including aggregation of small customers, with FERC-based regulation of transmission and continued state regulation of the distribution function. Unless and until the generation market is truly competitive, there is the possibility of abuse of market power by an unregulated monopoly. Market power can be best mitigated by regulation or effective competition. It is this notion of deregulation and competitively priced generation which is being considered by the State and the MPSC.

Such a policy, if done adroitly and with proper recognition of the various parties' interests, could result in lower customer costs for electricity in the long run. It could also assure that the shareholders of the electric utility would not be adversely affected, to the extent that the utilities are permitted to charge reasonable rates for transmission and distribution services and sufficiently recoup various stranded costs.

The principal mechanisms that could be employed to manage these issues are as follows:

a) Revisions to state or federal regulatory law to allow reasonable stranded cost recovery and to permit securitization of stranded assets where appropriate. This will go a long way toward removing financial viability concerns utilities have about the transition to a competitive power supply market. MPSC orders supporting such legislative intent would reinforce and strengthen such actions.

b) Clear demarcation of the jurisdictions of the state commissions and the FERC. The FERC's jurisdictional claims in Order 888 and Order 888-A are being challenged by many parties in pending court cases, but not by this Commission.

c) Revisions to State and federal regulatory law to limit economic regulatory authority over the generation function. Subsequent to that, all electric utility rates can be fully and completely unbundled.

d) Assurances of "fair competition" to all suppliers and customers.

In a restructured industry, it is generally presumed that the ultimate consumers will be the beneficiaries of competition. Prices should be driven downward as a result of more providers and competitive pressures.

10. Of those states which have adopted retail competition, how many have addressed the issue of "reciprocity", (that is, whether or not the state can bar sellers located in states which have not adopted retail competition from access to its retail markets)? Whose interests does a reciprocity requirement affect? Is a reciprocity requirement the only way to protect those interests, or are there alternatives? Would such a requirement raise constitutional issues?

The MPSC cannot respond as to what other states may have done to require reciprocity among electricity providers. The MPSC has required reciprocity in orders that it has issued. In orders in Case Nos. U-10143/U-10176 (dated 4/11/94 and 6/19/95) dealing with retail wheeling experiments for Edison and Consumers, the MPSC required reciprocity of municipals for any participation that they might have in the experiment. It did not, however, rule in favor of requiring reciprocity for other participant suppliers in that limited experiment (as noted above, these cases have been appealed by the utility companies involved). In the order in Case No. U-10685 et al. (dated 11/14/96), the MPSC addressed the reciprocity issue in approving a settlement which included a limited direct access program for Consumers. The MPSC ruled that reciprocity would be required for all utility power supply providers, but not for utilities acting as power supply providers to intermediary marketers or brokers.

Finally, reciprocity was recommended by the Commission Staff in its Staff Report on Electric Industry Restructuring in December 1996. The Staff recommended that eligibility to participate in a retail direct access program "should be conditioned on the requirement that all originating suppliers in any retail wheeling transaction provide for reciprocal rights to the utility providing that retail direct access service" (pp. 19-20).

Reciprocity should help assure a fair, competitive market for electricity supply. Also, reciprocity could assist in stranded cost mitigation, through the assurance of alternative markets for electrical capacity that might otherwise be isolated from any markets. If a utility cannot market its power at any cost because of a lack of reciprocity, stranded costs could be even higher.

An alternative to reciprocity as a means of protecting the interests of the local utility and maintaining the long run competitiveness of the generation market would simply be to require all generation markets to become fully competitive at the same time. Under that approach, for example, Ohio utilities would be exposed to competition from Michigan utilities (and vice versa) simultaneously. Thus, a utility in either state couldn't use the existing earnings power, cash flow, etc. from its non -reciprocal status to thwart the competition in the other state.

It is not clear that the reciprocity requirement would raise constitutional issues. Michigan has not had an opportunity to fully investigate this matter.

11. If Congress were to require "unbundling" of local distribution company services as part of a retail competition mandate, what practical problems might this present to state regulators?

Rates for residential customers could rise under a Congressional mandate requiring unbundling of local distribution services. This could occur if the current subsidy of residential customers is not offset by greater cost benefits of competitive generation markets.

Further, mandated unbundling could also cause a number of possible adverse impacts on various customer bills. For example, Consumers offers a senior citizen rate that is more than 20% below the standard residential rate. A mandate for unbundling might require elimination of that sort of subsidy as well.

Another practical problem of unbundling retail rates might be that a number of the components of unbundled service cannot be billed without changes in utility metering for smaller customers. To properly bill and control the load of customers in an unbundled and competitive environment, it is likely that all customers would require metering that would record time of use, kW demand, reactive power, etc. Also, two-way communications between customer meters and the load control center may be required. This could add hundreds of millions of dollars to the cost of electricity industry restructuring. In addition, more complicated customer service and billing regimes could add to the cost of electric service. Much of this infrastructure is not yet developed and will require a number of years of gradual phasing-in of any program.

The above discussion should clearly indicate that unbundling must be done carefully to avoid significant adverse rate impacts and unmanageable cost impacts. Any federal legislation should clearly enable states to address such issues, including the authority to assess line charges for these state determined goals. For that reason, the timing and methodology for going to competition, and for unbundling rates, should consider the unique problems of each state while not using these issues as a reason to do nothing.

12. Does your Commission face particular problems in connection with public power or federal power in an increasingly competitive electricity market?

Public power (e.g., municipally owned utilities) is a relatively small segment of the Michigan electric supply. In fact, municipal utilities serve less than 10% of the consumers in Michigan. The municipalities do not have significant surplus capacity or surplus reserves (<300 MW) to market, although the amount may be significant to them. There is no federally owned electric power generation in the State of Michigan, except for one small 15 MW hydro facility located at the Soo Locks.

A danger does exist, however, that private power marketers and brokers will in effect "launder" or "fence" tax-exempt and tax-free municipal and TVA owned power supply in the State and region. This would be unfair competition for the private suppliers: both existing investor-owned utilities and budding independent power producers.

13. How would federal legislation mandating competition by a near term date certain affect funding needs for your Commission? If additional funding were needed, would it be available, and what problems might arise if it were not?

It is too early to speculate what would be a proper response to this question. In any event, this is a state issue which should be left to the states.

14. Has your Commission considered or adopted securitization plans as a means of providing for recovery of utility stranded assets? What risks are inherent in this approach, and who bears them?

The MPSC has not adopted securitization plans as a means of providing for recovery of stranded assets or costs. However, the MPSC Staff Report on Electric Industry Restructuring issued in December 1996, suggested that: "securitization has the potential to reduce overall electric rates in Michigan very substantially, and thus is an important element in an overall plan of restructuring."(pp. 16-18). Authority for securitization is a matter for legislative consideration.

Risks are inherent in such an approach, in that -- in the event the trust mechanism is not securely constructed -- the possibility exists that one party or another could renege on any agreement to the detriment of others. Inasmuch as no detailed and specific proposal, including legislation, has yet been introduced or adopted, identification of what risks and who bears them cannot be made.

15. There is a wide divergence of opinion as to whether or not PUHCA should be modified or repealed. Given the record level of merger activity, this question may become significant for all state regulators, whether or not they currently have regulatory responsibilities relating to registered holding company activities.

a. Do you believe PUHCA impedes competition, at the wholesale or retail level? Can "effective competition" be achieved regardless of whether Congress enacts changes to PUHCA?

In part because of the significant exemptions to PUHCA which Congress enacted in 1978 and 1992, and the way that the SEC has chosen to administer PUHCA in the last 20 years, PUHCA presently does serve to tilt the playing field somewhat in favor of exempt holding companies. However, this may be appropriate since one effect of the geographic requirements of PUHCA is a concentration of market power in a region into the registered holding companies. This geographic concentration had advantages in an environment that included both structural and economic regulation. Easing of regulation must be accomplished very carefully in order to avoid enhancing the advantages of already dominant firms. It is hard to envision effective competition in a region if PUHCA is repealed and not replaced by some legislative constraint on inappropriate exercise of market power.

Effective competition can exist with PUHCA. PUHCA generally has deterred utilities and non-utilities from acquiring each other. It has prevented -- at least until recent years -- the concentration of electric utility assets into a few entities. Even though a number of electric utilities have chosen to acquire others or merge recently, the industry still has over 100 publicly traded corporations, and countless rural electric cooperatives and municipal utilities. Although there are potential problems with local and regional concentration, there is not a dominant utility nationwide. The FERC has made admirable strides in promoting a competitive wholesale electric market. Good start notwithstanding, wholesale competition is far from comfortably established. Retail competition is even further from being in a position to obviate the need for structural protections from market power abuses.

b. Do you believe Congress should modify or repeal PUHCA? If so, why, and under what conditions?

PUHCA should not be repealed without replacement. Congress should move very cautiously toward modifying PUHCA or replacing it to ensure that consumers will not be harmed by either mergers or diversification. In your April 29, 1997 letter to SEC Chairman Levitt you stated in Question #2:

> We are concerned that recent activities by holding companies bear a striking resemblance to the type of conduct that led to the enactment of PUHCA. In particular, it is becoming increasingly difficult to determine what activities holding companies are engaged in, the type and volume of affiliate transactions between regulated and nonregulated subsidiaries, and what the overall structure of a registered holding company actually looks like today.

In modifying or drafting a successor to PUHCA, Congress should be aware that problems related to the complexity of corporate structure and affiliate transactions are also germane to exempt holding companies.

One of the concerns expressed by the original architects of PUHCA related to problems inherent in having utility management physically remote from the area being served. While this is still a concern, Congress may want to explore the possibility that ownership of geographically dispersed production, transmission and distribution facilities may help alleviate regional market dominance by any single entity. Strong affirmation of state jurisdiction over retail markets, including retail transmission, would help offset the potential problems from remote management.

Implications of the removal of limits on utility speculation into unrelated ventures and acquisitions of utilities by general holding companies and other companies, whether domestic or foreign, warrant extraordinarily careful review.

Other aspects of PUHCA that are worth preserving include several provisions from the Energy Policy Act of 1992, such as the state consent and certification provisions in Sections 32 and 33, Sections 32 (k) and (l) regarding affiliate transactions and reciprocal relationships, and the "Books and Records" provisions added to Section 201 of the Federal Power Act.

To improve PUHCA administration, the MPSC supports transferring jurisdiction from the SEC to FERC.

c. ***Should Congress enact legislation to modify the holding in <u>Ohio Power Co.</u> v. <u>FERC</u>, 954 F.2d 779 (D.C.Cir. 1992)?***

Your question asks whether Congress should modify the regulatory authority of the FERC and the SEC as codified in PUHCA and the Federal Power Act. It is a matter of important public policy whether ratesetting for the wholesale price of electricity should be housed in one federal agency or, as held in <u>Ohio Power Co.</u>, two. The solution to the question regarding Ohio Power Co. will be answered when and if Congress repeals or modifies PUHCA. As noted above, housing all ratemaking authority in one federal agency seems sensible.

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May 12, 1997

The Honorable John D. Dingell, Ranking Member
Commerce Committee Democratic Office
564 Ford House Office Building
U. S. House of Representatives
Washington, D.C. 20515

Dear Congressman Dingell,

By letter dated May 9, 1997, John G. Strand, Chairman of the Michigan Public Service Commission transmitted to you responses to your April 10, 1997 letter. I generally support the responses Commissioner Strand provided to you; however, I would like to provide you some information concerning my personal views on the general question of industry restructuring.

I am enclosing a copy of a statewide survey of Michigan electric customers concerning electric utility issues. As you will see from the survey, the people of the state of Michigan may not be on the same page with legislators and regulators who advocate wholesale changes to Michigan's regulation of electric utilities.

I am enclosing two other items: a letter published in the Detroit News responding to an editorial electric deregulation and a recent, off-the-cuff interview I was asked to do with Lansnet, a local publication, concerning electric industry restructuring. While I am informed that I may have overstated the efficiency of the Big Rock Nuclear Plant (located near Charlevoix, Michigan), this interview fairly states concerns which, I believe, should be addressed by both state and federal legislators and regulators as we contemplate the future of regulation.

I commend our Electric Staff, especially John Abramson, Director, and Jim Padgett, Supervisor, Engineering Section, to you or your staff if you should have any questions. Of course, I would also be pleased to offer any assistance to you that you might find useful.

Very truly yours,

John C. Shea

John C. Shea
Commissioner

cc: Hon. John G. Strand (w/ attachments)
Hon. David A. Svanda (w/ attachments)